**Plumbers & Pipefitters Local Union No. 149 *and* Central Illinois Laborers' Local 703 a/w Laborers' International Union of North America and G.A. Rich & Sons, Inc.** Cases 33–CD–429 and 33–CD–430

June 14, 2004

## DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND WALSH

This is a jurisdictional dispute proceeding under Section 10(k) of the National Labor Relations Act (the Act). The charge in this proceeding was filed on November 12, 2003,[1] by G.A. Rich & Sons, Inc. (Employer), alleging that Central Illinois Laborers' Local 703 (Laborers) violated Section 8(b)(4)(D) of the Act by engaging in proscribed activity with an object of forcing the Employer to assign certain work to employees represented by the Laborers rather than to employees represented by the Plumbers & Pipefitters Local Union No. 149 (Plumbers). Another charge was filed in this proceeding alleging that Plumbers violated Section 8(b)(4)(D) of the Act by engaging in proscribed activity with an object of preventing the Employer from reassigning certain work originally assigned to Plumbers to employees represented by Laborers.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

### I. JURISDICTION

The parties stipulated that the Employer, an Illinois corporation, is a mechanical contractor conducting business in the State of Illinois, and that, during the past calendar year, the Employer purchased and received goods at its facility in Illinois valued in excess of $50,000 directly from vendors located outside the State of Illinois, and has received gross revenues in excess of $1 million. The parties further stipulated, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that Plumbers and Laborers are labor organizations within the meaning of Section 2(5) of the Act.

### II. THE DISPUTE

#### *A. Background and Facts of the Dispute*

The Employer is a mechanical and site-utility contractor performing commercial plumbing and site-utility work throughout Illinois. The Employer is a signatory to a collective-bargaining agreement with Plumbers, which expires on May 31, 2006. The Employer is also a signatory to collective-bargaining agreement with Laborers, which expires on April 30, 2008. The bargaining relationships between the Employer and both labor organizations are predicated on Section 8(f) of the Act.

The work in dispute is located within the property lines of the University of Illinois, Champaign/Urbana in Champaign, Illinois. The University of Illinois hired Williams Brothers as a general contractor for the construction of the new Intramural Physical Education Building (IMPE) and University Campus Recreational Center. In the autumn of 2003, Williams Brothers subcontracted with the Employer to perform the plumbing and site-utility work on the project. After the Employer received the contract for the University of Illinois project in the autumn of 2003, the Employer assigned the work to employees represented by Plumbers. Thereafter, the Employer received a telephone call from Laborers' Business Manager Marc Manuel. Manuel expressed his opinion that all of the work at the University of Illinois project was Laborers' work. The Employer's vice president, Jack Gilbert, stated that he might be willing to put one employee represented by Laborers on the job in order to maintain good relations. Manuel rejected Gilbert's offer. According to Gilbert, Manuel then threatened to file a grievance and picket the job if the work was not assigned to employees represented by Laborers. Manuel denied making these threats.

Thereafter, on October 8, Gilbert sent a letter to Plumbers, formally assigning the University of Illinois project to employees represented by Plumbers. Gilbert sent a copy of this letter to Manuel who, on October 13, sent a letter to the general contractor asserting that the disputed work ought to have been assigned to employees represented by Laborers. To support its position, Laborers contended that an agreement dated January 23, 1941, between the International Hod Carriers, Building and Common Laborers' Union of America and the United Association of Journeymen Plumbers and Steam Fitters of the United States and Canada (the 1941 Agreement) provides that all work of the type disputed here is the work of employees represented by Laborers.[2]

[1] All dates herein are 2003, unless otherwise noted.

[2] By its terms, the 1941 Agreement applies to "all work on subways, tunnels, highways, viaducts, streets and roadways in connection with

On October 27, Laborers filed a grievance against the Employer, alleging that the Employer had violated the parties' collective-bargaining agreement by assigning the disputed work to employees represented by Plumbers. The Employer, in a letter dated November 20, denied Laborers' grievance and declined to participate in the processing of the grievance. In a letter dated November 10, Plumbers informed the Employer that if it were to reassign the disputed work to employees represented by Laborers, Plumbers would "strike and picket the project." On November 12, the Employer filed the instant charges against both labor organizations.

### *B. Work in Dispute*

Although Laborers initially claimed the entire University of Illinois project, it disclaimed certain portions of the project at the hearing. In accordance with Laborers' clarification, the work in dispute is all work outside the buildings related to site-sanitary sewer system, site-storm sewer system, and underground drainage work, including all unloading, scattering, grading trenches, hooking pipe, setting pipe, all pipe connections, backfill and compaction at the University of Illinois Campus Recreational Center and IMPE project, within the property lines at the University of Illinois Campus in Champaign/Urbana, Illinois.

### *C. Contentions of the Parties*

The Employer contends that a jurisdictional dispute exists and that there is no agreed on method for resolving the dispute. The Employer contends that there is reasonable cause to believe that both Laborers and Plumbers violated Section 8(b)(4)(D) of the Act, and that the work in dispute should be awarded to the employees represented by Plumbers based on the factors of collective-bargaining agreement, employer preference and past practice, area and industry practice, economy and efficiency of operations, and relative skills and training.

Laborers contends that there is no reasonable cause to believe that Laborers violated Section 8(b)(4)(D) of the Act. Laborers denies that Manuel threatened to picket the University of Illinois job. Laborers further contends that the work in dispute should be awarded to the employees represented by Laborers based on area practice and the 1941 Agreement.

Plumbers contends that the Employer has properly assigned the disputed work to employees represented by Plumbers. In so contending, Plumbers relies on the same factors the Employer relies on: collective-bargaining agreement, employer preference and past practice, area and industry practice, relative skills and training, and economy and efficiency of operations. Plumbers additionally relies on a 1998 arbitration decision that addresses the 1941 Agreement relied on by Laborers.[3]

### *D. Applicability of the Statute*

Before the Board may proceed with determining a dispute pursuant to Section 10(k) of the Act, it must be established that: (1) there are competing claims for the work; (2) there is reasonable cause to believe that Section 8(b)(4)(D) has been violated; and (3) the parties have not agreed on a method for the voluntary adjustment of the dispute.[4]

We find that there are competing claims for the work here in dispute. Plumbers has at all times claimed the disputed work for the employees it represents, and these employees have been performing the work. Laborers initially claimed the entire University of Illinois project, but disclaimed certain portions of the project at the hearing. It is clear, however, that Laborers claims the disputed work for the employees it represents.

We also find that there is reasonable cause to believe that Section 8(b)(4)(D) of the Act has been violated. It is undisputed that Plumbers, by way of a letter to the Employer, threatened to picket the job if the Employer reassigned the work in dispute to employees represented by Laborers. Further, Gilbert testified that Manuel threatened that Laborers would picket the job if the disputed work were not reassigned to employees represented by Laborers. Although Manuel denied making this threat, his denial does not prevent the Board from proceeding under Section 10(k). In order to proceed to a determination of the dispute, the Board need not rule on the credibility of testimony, but need only find reasonable cause to believe that the statue has been violated. *Electrical Workers Local 363 (U.S. Information Systems)*, 326 NLRB 1382, 1383 (1998).

Finally, the parties have stipulated that there is no method for voluntary adjustment of the dispute to which all parties are bound. We therefore find that all three jurisdictional prerequisites are established, and the dispute is properly before the Board for determination.

### *E. Merits of the Dispute*

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various

sewers and water mains." The 1941 Agreement is discussed below in the section headed "Interunion agreements."

[3] The 1998 arbitration decision is discussed below in the section headed "Interunion agreements."

[4] *Carpenters Local 275 (Lymo Construction Co.)*, 334 NLRB 422, 423 (2001); *Teamsters Local 259 (Globe Newspaper Co.)*, 327 NLRB 619, 622 (1999); *Laborers Local 113 (Super Excavators)*, 327 NLRB 113, 114 (1998).

factors. *NLRB v. Electrical Workers Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J.A. Jones Construction)*, 135 NLRB 1402, 1410–1411 (1962).

The following factors are relevant in making the determination of this dispute.

1. Certifications and collective-bargaining agreements

There is no evidence of a Board certification concerning the employees involved in this dispute. However, the Employer is signatory to collective-bargaining agreements with both Laborers and Plumbers. Plumbers introduced its collective-bargaining agreement at the hearing. Plumbers' collective-bargaining agreement with the Employer expressly refers to work of the kind that is in dispute. The Employer introduced its collective-bargaining agreement with Laborers. That collective-bargaining agreement makes no mention of work of the kind that is in dispute. Further, there is no testimony regarding the applicability of Laborers' collective-bargaining agreement with the Employer. Accordingly, we find that this factor favors an award of the disputed work to employees represented by Plumbers.

2. Employer preference and past practice

The Employer's vice president, Jack Gilbert, testified that the Employer prefers to assign the work in dispute to the employees represented by Plumbers. The Employer introduced a list of 15 specific projects in which the type of work at issue here was awarded to employees represented by Plumbers. Accordingly, we find that the factor of Employer preference and past practice favors awarding the work in dispute to employees represented by Plumbers.

3. Area and industry practice

Plumbers introduced letters from numerous contractors in the Champaign/Urbana area on the factor of area practice. All the letters confirmed that plumbing jobs within the property lines of the property owners, such as the project here in dispute, are assigned exclusively to employees represented by Plumbers. Further, Plumbers presented a decision by the National Joint Board for Settlement of Jurisdictional Disputes, Building and Construction Industry, confirming that it is industry practice to assign work of the type here disputed to employees represented by Plumbers. In its brief, Laborers contends that the distinction between work inside property lines and work outside property lines has never been followed in the Champaign area. However, Laborers introduced no evidence of area practice or industry practice, and its unsupported contention is contradicted by the area practice evidence introduced by Plumbers. Accordingly, we find that the factor of area and industry practice favors an award of the work in dispute to employees represented by Plumbers.

4. Economy and efficiency of operations

At the hearing, Laborers clarified that it was not claiming all of the work on the project, but rather seeking a split crew of employees represented by Plumbers and employees represented by Laborers. The Employer's vice president, Jack Gilbert, testified that in his 32 years as a contractor, he has never worked a job with a split crew of Plumbers and Laborers. Gilbert testified that a split crew would be "chaotic" and "inefficient," and that, as a result of employing a split crew, there would often be times during which a group of employees would be idle. Further, Gilbert testified that employing a split crew could possibly increase labor costs because of provisions of the collective-bargaining agreement concerning the starting time and the minimum number of hours for which employees must receive compensation. The record establishes that employees represented by Plumbers currently perform the disputed work in a competent manner to the satisfaction of the Employer.

Although Plumbers' business manager, Larry Swope, testified in general terms about how Laborers-represented employees might remain busy on a split crew, he also testified that he had reviewed the blueprints of the project at issue and that, in his opinion, it would be impossible to keep both Plumbers and Laborers on a split crew busy the entire day. The cost of employing a split crew is, on paper, less costly per hour. However, the record shows that employing a split crew would result in down time, causing the job to take longer than it would were it performed by a crew of employees represented by Plumbers. Therefore, when considering all the circumstances, employing a crew of employees represented by Plumbers is more economical and efficient than employing a split crew. Accordingly, the factor of economy and efficiency of operations favors awarding the work in dispute to employees represented by Plumbers.

5. Relative skills and training

Work to be performed within the property lines of a property owner (such as the work in dispute) requires a greater skill level than does work to be performed outside the property lines. As explained by Gilbert, work performed outside property lines is more repetitious and less complicated than work within property lines, which requires more expertise and varied abilities, such as the

ability to read blueprints. According to Gilbert, the employees represented by Plumbers possess the requisite skills to perform the disputed work while the employees represented by Laborers do not. Plumbers presented testimony establishing that all of the skills necessary to perform the disputed work are taught in the Plumbers' training program, which has been in effect for the past 50 years.

Laborers presented testimony regarding its apprenticeship program, which has been in existence for the past 5 years. Many of the employees represented by Laborers have not participated in the program. Laborers offered little detail about the skills taught in its program, but Laborers concedes that certain skills necessary to complete the disputed work, such as blueprint reading, are not taught in its program.

Thus, while the record clearly establishes that employees represented by Plumbers have the skills and training necessary to perform the work in dispute, the record does not establish that employees represented by Laborers possess the necessary skills and training. Accordingly, we find that the factor of relative skills and training favors an award of the work in dispute to employees represented by Plumbers.

6. Interunion agreements

Laborers contends that the 1941 Agreement favors an award of the work in dispute to employees represented by Laborers. Plumbers contends that the 1941 Agreement favors an award of the work in dispute to employees represented by Plumbers because the agreement was "clarified" by a 1998 arbitral decision allocating piping work inside property lines to Plumbers and piping work outside the property line to Laborers.

We find that the 1941 Agreement and the arbitral decision do not support either Laborers' or Plumbers' contention. As stated above, supra fn. 2, the 1941 Agreement applies to "all work on subways, tunnels, highways, viaducts, streets and roadways in connection with sewers and water mains." None of the work in dispute here involves a subway, tunnel, highway, viaduct, street, or roadway. The 1941 Agreement was also introduced into evidence in the 1998 arbitration, referenced above, of a jurisdictional dispute between Laborers' International Union of North America (LIUNA) and the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry (UA). In that case, the work in dispute included the installation of water mains, sewer and storm systems, a fire main, and associated piping "on site outside the building and within the private property line" of a truck assembly plant. Noting that the 1941 Agreement limits LIUNA's "participation in piping activities" to "work on subways, tunnels, highways, viaducts, streets and roadways," the arbitrator found that "[t]he work in question clearly does not fall within the 1941 description." We find likewise with respect to the work in dispute here. Further, contrary to Plumbers' contention, the 1998 arbitral decision expressly declines to draw a distinction between work performed inside the property line and work performed outside the property line. Accordingly, the 1941 Agreement and the arbitral decision do not favor an award of the disputed work to either group of employees.[5]

## CONCLUSIONS

After considering all the relevant factors, we conclude that employees represented by Plumbers are entitled to perform the work in dispute. We reach this conclusion relying on the factors of collective-bargaining agreements, employer preference and past practice, area and industry practice, economy and efficiency of operations, and relative skills and training. In making this determination, we are awarding the disputed work to employees represented by Plumbers, not to that labor organization or its members. This determination is limited to the controversy that gave rise to this proceeding.

## DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

1. Employees of G.A. Rich & Sons, Inc., represented by Plumbers & Pipefitters Local Union No. 149 are entitled to perform all work outside the buildings related to site-sanitary sewer system, site-storm sewer system, and underground drainage work, including all unloading, scattering, grading trenches, hooking pipe, setting pipe, all pipe connections, backfill and compaction at the University of Illinois Campus Recreational Center and IMPE project, within the property lines at the University of Illinois Campus in Champaign/Urbana, Illinois.

2. Central Illinois Laborers' Local 703 is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force G.A. Rich & Sons, Inc., to assign the disputed work to employees represented by it.

[5] Because the Employer was not a party to the agreement or to the arbitral proceeding, Chairman Battista would give little weight to them even if they were otherwise relevant to the issue involved herein. See *Iron Workers Local 1 (Goebel Forming)*, 340 NLRB No. 136, slip op. at 5 (2003).

3. Within 14 days from this date, Central Illinois Laborers Local 703 shall notify the Regional Director for Region 33 in writing whether it will refrain from forcing G.A. Rich & Sons, Inc., by means proscribed by Section 8(b)(4)(D), to assign the disputed work in a manner inconsistent with this determination.

Dated, Washington, D.C. June 14, 2004

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD